

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANKLIN MATEO,

Plaintiff,

-against-

WESTCHESTER COUNTY et al.,
Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 9/10/2021

18 CV 3499 (NSR) (JCM)

ORDER OF DISMISSAL

NELSON S. ROMÁN, United States District Judge:

Plaintiff initiated this action on April 17, 2018 generally claiming that his civil rights were violated under 42 U.S.C. § 1983 due to substandard food he was served as a pretrial detainee at Westchester County Jail. (ECF No. 1.) On September 29, 2020, the Court issued an opinion and order granting in part and denying in part Defendants' motion to dismiss, holding that Plaintiff had plausibly stated a §1983 *Monell* claim for failure to properly train and supervise against Westchester County and Eighth Amendment claims against the four "personally involved" employees. (ECF No. 49.) Defendants answered the remaining claims on November 30, 2020 (ECF No. 51) and the case was referred to Magistrate Judge Judith McCarthy on March 18, 2021 (ECF No. 60).

On May 21, 2021, Defendants filed a motion to dismiss for lack of prosecution, indicating that Defendants arranged for Plaintiff's deposition on May 10, 2021 with a Spanish interpreter but before answering any substantive questions, Plaintiff terminated the deposition and insisted he no longer wanted to pursue his claims and, further, that Plaintiff never responded to written discovery or sent written discovery requests to Defendants. (ECF No. 64; *see* ECF No. 65.) On May 25, 2021, the Court issued an order directing Plaintiff to respond to Defendants' motion to

dismiss on or before June 15, 2021, indicating that Plaintiff's failure to timely oppose the motion will result in the motion being resolved without opposition. (ECF No. 67.) That order was mailed to Plaintiff by the Clerk's office, but Plaintiff did not respond. On September 2, 2021, Defendants filed a second motion to dismiss for lack of prosecution. (ECF No. 68.)

Plaintiff stated on the record at his deposition on May 10, 2021 that he no longer wished to pursue the claims in this case and has not communicated with the Court since. Plaintiff's failure to voluntarily dismiss or prosecute this action has impeded the Court's efforts to "avoid calendar congestion and ensure an orderly and expeditious disposition of cases." *Cortez v. Suffolk Cnty. Corr. Facility*, No. 15-CV-1957 (JFB) (AKT), 2016 WL 6302088, at *2 (E.D.N.Y. Oct. 25, 2016).

Under Rule 41(b) of the Federal Rules of Civil Procedure, "a district judge may, *sua sponte*, and without notice to the parties, dismiss a complaint for want of prosecution." *Taub v. Hale*, 355 F.2d 201, 202 (2d Cir. 1966); *see West v. City of New York*, 130 F.R.D. 522, 524 (S.D.N.Y. 1990) ("[T]he Supreme Court has recognized the inherent power of a district judge to dismiss a case for the plaintiff's failure to prosecute."). "Dismissal for want of prosecution is a matter committed to the discretion of the trial judge." *Peart v. City of New York*, 992 F.2d 458, 461 (2d Cir. 1993) (internal quotation marks omitted). This discretion, however, "is conditioned by certain minimal requirements." *Id.* (internal quotation marks omitted). In particular, the Court should consider:

- (1) the duration of plaintiff's failures; (2) whether plaintiff had received notice that further delays would result in dismissal; (3) whether defendant is likely to be prejudiced by further delay; (4) whether the district judge has carefully balanced the need to alleviate court calendar congestion and a party's right to due process; and (5) whether the court has assessed the efficacy of lesser sanctions.

Id. (internal quotation marks omitted).

Accordingly, this matter is DISMISSED without prejudice for want of prosecution pursuant to Fed R. Civ. P. 41(b). The Clerk of Court is directed to terminate the motions at ECF

Nos. 64 and 68 and terminate this action. The Clerk of Court is further directed to mail a copy of this order on pro se Plaintiff at the address on ECF and to show service on the docket.

Dated: September 10, 2021
White Plains, New York

SO ORDERED:

A handwritten signature in dark ink, appearing to read "Nelson S. Román", is written over a light blue horizontal line.

NELSON S. ROMÁN
United States District Judge